



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Mr. Warren Schott, CFA
Executive Director
Fire and Police Pension Fund
311 Roosevelt
San Antonio, Texas 78210-2700

OR2003-3414

Dear Mr. Schott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181478.

The Fire and Police Pension Fund, San Antonio (the "fund") received a request for the "names and addresses of the active Fire & Police membership as well as the retired Fire and Police membership" as well as copies of the minutes of the last three board meetings. You claim that the list of names and addresses is excepted from disclosure under sections 552.101, 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

Initially, we note that you have not provided a copy of the requested minutes for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. To the extent minutes responsive to the request exists, we assume that they have been released. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

We now turn to your claimed exceptions for the submitted information. You argue that the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. In our opinion, the fund is obliged under section 552.117 to protect only information pertaining to employees and officials of the governmental body receiving the request for information, in this case the fund. We note, for example, that the companion provision to section 552.117, section 552.024, provides that an employee of a governmental body may deny public access to certain information "in the custody of the governmental body." Also, the legislature has established no mechanism for a governmental body's apprising itself of whether given individuals were officials or employees of other governmental bodies, or whether such individuals had exercised the option under section 552.024 to prohibit release of section 552.117 information. We therefore do not believe it was the legislature's intent to require a governmental body to protect section 552.117 information for individuals who have not been officials or employees of that governmental body. Accordingly, section 552.117 does not protect section 552.117 information pertaining to officials or employees of governmental bodies other than the fund. You acknowledge in your brief that "[s]ection 552.024 is not applicable to the Fund because none of the individuals about whom the information is sought are current or former employees or officials of the Fund." Thus, none of the submitted information that relates to active or retired fire fighters or retired peace officers may be withheld under section 552.117(1).

You assert that section 552.117(2) applies to active peace officers. However, as we stated above, because the fund does not employ the peace officers, the fund is unable to determine whether the particular individuals are currently licensed as peace officers as defined by Code of Criminal Procedure article 2.12. Thus, section 552.117(2) applies to a governmental body that employs such persons. Section 552.1175, which also applies to current peace officers,² is the applicable exception under these circumstances and provides in part that

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, you do not inform this office, nor does any of the submitted information indicate, whether any of the current peace officers has notified the fund of his or her election of confidentiality for this information in accordance with the

²A peace officer is defined by Article 2.12, Code of Criminal Procedure.

above-cited subsections 552.1175(b)(1) and (2). *See, e.g.*, Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release voter information made confidential under section 552.1175 of the Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until that governmental entity receives a section 552.1175 notification). If the active peace officers have complied with section 552.1175(b), the fund must withhold their addresses. If not, the fund must release the addresses.

You also assert that the submitted information is confidential under sections 552.101 and 552.102. Section 552.102 of the Government Code protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). As the submitted information is not information in a personnel file, it may not be withheld under section 552.102. We note, however, that the test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101. Thus, we will consider whether the submitted information must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrine of common law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). After reviewing the submitted information, we conclude that it is not highly intimate and embarrassing, and therefore is not confidential under common-law privacy and may not be withheld under section 552.101. *See* Open Records Decision Nos. 554 (1990) (concluding that disclosure of a person's name, home address, and phone number is not an invasion of privacy), 455 (1987) (concluding that home addresses and phone numbers are not “intimate” information and not protected as to applicants, probationers, or private citizens). Accordingly, the requested names and addresses must be released to the requestor. However, you may not release the addresses of active peace officers if they elected pursuant to section 552.1175(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 181478

Enc. Submitted documents

c: Mr. Larry Reed
c/o Warren Schott
Fire & Police Pension Fund
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San Antonio, Texas 78210-2700
(w/o enclosures)